

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 253, 2015**

#### **Issued by authority of the Parliamentary Secretary to the Treasurer**

*Census and Statistics Act 1905*

*Census and Statistics (Census) Regulation 2015*

Section 27 of the *Census and Statistics Act 1905* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purposes of the *Census and Statistics (Census) Regulation 2015* (the Regulation) are to remake the *Census and Statistics (Census) Regulations 2005* and to extend the operation of the Act to Norfolk Island.

The Act authorises the Australian Statistician to collect statistics and conduct the Census.

The Australian Statistician must take the Census every fifth year from 1981, under section 8 of the Act. In each Census, the Australian Statistician must collect statistical information in relation to the matters prescribed for the purposes of that section.

The Regulation prescribes these matters for Censuses that take place after it commences. Previously, these matters were prescribed by the *Census and Statistics Regulations 2005*, which would have been repealed on 1 April 2016 under section 50 of the *Legislative Instruments Act 2003* as part of the regular sunseting of legislative instruments.

There is no substantive change between the matters prescribed by the Regulation and the matters previously prescribed by the *Census and Statistics Regulations 2005*. Minor changes have been made to reflect current drafting practices and to improve readability.

The Act extends to such external territories of Australia as are prescribed. The Regulation prescribes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as external territories to which the Act applies.

The amendments made by the Regulation are consequential to the amendments made by the *Norfolk Island Legislation Amendment Act 2015*. Those amendments extended many mainland laws to Norfolk Island, implementing the Government's election commitment made in September 2013. This is consistent with the general principle that, since Norfolk Island is part of Australia, Australians who live there should have the same obligations and receive the same access to benefits as other Australians.

Details of the Regulation are set out in the [Attachment](#).

The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is an instrument for the purposes of the *Legislative Instruments Act 2003*.

An exposure draft of the Regulation and an accompanying Explanatory Statement were released for public consultation from 21 October 2015 until 9 November 2015. No changes were made as a result of consultation.

The Regulation commences on the day after it is registered.

## **ATTACHMENT**

### **Details of the *Census and Statistics (Census) Regulation 2015***

#### **Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Census and Statistics (Census) Regulation 2015*.

#### **Section 2 – Commencement**

This section provides that the Regulation will commence the day after it is registered.

#### **Section 3 – Authority**

This section provides that the Regulation is made under the *Census and Statistics (Census) Act 1905*.

#### **Section 4 – Schedule**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

#### **Section 5 – Definitions**

This section defines certain terms for the purposes of the Regulations.

***Australia***, when used in a geographical sense, is defined to include Norfolk Island, the Territory of Christmas Island; and the Territory of Cocos (Keeling) Islands. This definition overrides the application of the *Acts Interpretation Act 1901* where Australia is used in a geographical sense. Otherwise the definition of Australia under the *Acts Interpretation Act 1901*, which does not include Norfolk Island when Australia is used in a geographical sense, would apply.

This definition mirrors section 6, which prescribes that the Act extends to Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

***Census night*** is defined as the night of the Census day for a Census. ***Census day*** is defined in the Act as the day appointed, under section 8(2) of the Act as the Census day for that Census. The Census day is the date on which the Census is taken.

The definition of Census night is included because the several of the matters prescribed for a Census relate to persons accommodated at a dwelling on Census night, or registered motor vehicles garaged or parked at a dwelling on Census night.

Census night had the same meaning in the *Census and Statistics Regulations 2005*.

***Private dwelling*** is defined to include all dwellings except for certain, specified types of dwellings. Excluded dwellings include commercial premises (such as a hotel) and residential institutions (such as a nursing home).

Different matters are prescribed for a Census depending on whether a dwelling is a private dwelling or not (see section 8, 9 and 10 of the Regulation).

Private dwelling had the same meaning in the *Census and Statistics Regulations 2005*.

#### Section 6 – Extension of the Act to external Territories

The Act extends to such external territories of Australia as are prescribed (section 2 of the Act). The Regulation prescribes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as external territories to which the Act applies.

The Territory of Christmas Island and the Territory of Cocos (Keeling) Islands were also prescribed in the *Census and Statistics Regulations 2005*.

Norfolk Island has been prescribed as a consequence of the amendments made by the *Norfolk Island Legislation Amendment Act 2015*. Those amendments extended many mainland laws to Norfolk Island, implementing the Government's election commitment made in September 2013. This is consistent with the general principle that, since Norfolk Island is part of Australia, Australians who live there should have the same obligations and receive the same access to benefits as other Australians.

The change will extend the Australian Statistician's authority to collect statistics and conduct the Census to Norfolk Island.

#### Section 7 – Statistical information in relation to persons

This section prescribes matters in relation to which the Australian Statistician must collect statistical information in a Census. These matters relate to persons.

No substantive changes have been made to the matters that were prescribed in clause 1 of Schedule 1 to the *Census and Statistics Regulations 2005*. Minor changes have been made to reflect current drafting practices and improve readability.

#### Section 8 – Statistical information in relation to a household accommodated on the Census night in a private dwelling

This section prescribes matters in relation to which the Australian Statistician must collect statistical information in a Census. These matters relate to households accommodated on Census night in a private dwelling.

No substantive changes have been made to the matters that were prescribed in clause 2 of Schedule 1 to the *Census and Statistics Regulations 2005*. Minor changes have been made to reflect current drafting practices and improve readability.

#### Section 9 – Statistical information in relation to a private dwelling

This section prescribes matters in relation to which the Australian Statistician must collect statistical information in a Census. These matters relate to private dwellings.

No substantive changes have been made to the matters that were prescribed in clause 3 of Schedule 1 to the *Census and Statistics Regulations 2005*. Minor changes have been made to reflect current drafting practices and improve readability.

#### Section 10 – Statistical information in relation to a dwelling other than a private dwelling

This section prescribes matters in relation to which the Australian Statistician must collect statistical information in a Census. These matters relate to dwellings other than private dwellings.

No substantive changes have been made to the matters that were prescribed in clause 4 of Schedule 1 to the *Census and Statistics Regulations 2005*. Minor changes have been made to reflect current drafting practices and improve readability.

### Schedule 1 – Repeals

Schedule 1 repeals the *Census and Statistics (Census) Regulations 2005*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Census and Statistics (Census) Amendment Regulation 2015**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

This Legislative Instrument:

- remakes the *Census and Statistics (Census) Regulation 2005*, which prescribes the matters on which the Australian Statistician may collect statistical information in the Census; and
- extends the application of the *Census and Statistics Act 1905* to Norfolk Island, allowing the Statistician to collect statistics and conduct the census in Norfolk Island.

### **Human rights implications**

The continued collection of data through the Census has a range of potential benefits for human rights. Statistics collected by the Australian Statistician are used by governments to make more informed decisions on how to distribute resources, including government funds. This may impact on many different aspects of government planning, including those relating to housing, healthcare, education and infrastructure.

By extending the operation of the *Census and Statistics Act 1905* to Norfolk Island, this Legislative Instrument engages and promotes the right to take part in public affairs and elections, because population data collected by the Australian Statistician is used to determine electoral boundaries.

The right to take part in public affairs is contained in Article 25 of the *International Convention on Civil and Political Rights*. Article 25 relevantly provides that:

‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restriction:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) ...’

Following the commencement of the *Norfolk Island Legislation Amendment Act 2015*, the Government will be responsible for certain aspects of the governance of Norfolk Island previously handled by the Norfolk Island Legislative Assembly, including taxation, social security, the provision of health care, and immigration.

Although Norfolk Island residents could previously vote in Federal elections, this will take on a new significance with the transfer of governance responsibilities to the Government. The extension of the *Census and Statistics Act 1905* to Norfolk Island will ensure that Norfolk Island residents are correctly accounted for in determining electoral boundaries under the *Commonwealth Electoral Act 1918*.

### **Conclusion**

This Legislative Instrument is compatible with human rights.